No. 78

NO. 9406

MAY 9 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
MARCH TERM, A. D. 1944

American Broach Employees Protective Association, Petitioner

vs.

National Labor Relations Board, Respondent

and

American Broach & Machine Company, Respondent

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support of Petition.

MELLOTT and KELLY
Attorneys for Petitioner,
Ann Arbor, Michigan

HOWARD LICHTENSTEIN
Attorney for National Labor Relations Board

BURKE, BURKE and SMITH
Attorneys for American Broach & Machine Company

SUBJECT INDEX

Page

PETITION FOR WRIT OF CERTIORARI

Summary State of Matter Involved 1

Jurisdictional Statement 3

Question Presented 3

Reasons Relied on for Allowance of Writ 3

Prayer for Writ 4

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion of Court Below 6

Jurisdiction 6

Statement of the Case 6

Specification of Errors 7

Argument 7

IN THE SUPREME COURT OF THE UNITED STATES
MARCH TERM, A. D. 1944
NO. 9406

American Broach Employees Protective Association, Petitioner and Appellant

vs.

National Labor Relations Board, Respondent and Appellee

American Broach & Machine Company, Respondent and Appellee

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support Thereof.

To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Your Petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED

The Petitioner, American Broach Employees Protective Association, is an independent union composed of employees of the American Broach and Machine Company of Ann Arbor, Michigan. The Petitioner is incorporated under the laws of the state of Michigan and ever since its incorporation in 1937 it has filed its annual

reports and paid its annual franchise fees to the State of Michigan. The Petitioner has held general and executive meetings from time to time. (R-203).

In 1937 the UAWA-CIO was trying to obtain the right to be the sole bargaining agent for the employees of the American Broach and Machine Company. An election was ordered by the National Labor Relations Board and the Petitioner won the election and was duly certified to be the sole bargaining agent by the N.L.R.B.

This certification has never been withdrawn or revoked. (R-208).

On behalf of the UAW-CIO, the National Labor Relations Board issued its complaint May 12, 1942 alleging, among other things, that "in and after March 1942, (the American Broach and Machine Company) dominated and interfered with the formation and administration of the Association and contributed financial and other support to the Association". A hearing was held in Ann Arbor between May 28 and June 12, 1942 at which time Petitioner was granted leave to intervene, limited to the interest of the Association in the issues. (R-46).

On the first day of the hearing Petitioner's members assembled in the hearing room to assist Counsel for the Petitioner in his cross examination of the Board's witnesses. The hearing was thereupon adjourned by the Trial Examiner and after conference between the Trial Examiner and the War Labor Board, telegrams were sent by the War Labor Board to the Petitioner directing that no employee be present at the hearing except when called to testify. (R-273-274).

The Trial Examiner consistently denied Petitioner's Counsel an opportunity to have members of the Association present when the Board's witnesses were testifying against that member of the Association.

The Board entered its order October 31, 1942 by which order the American Broach and Machine Company is commanded to cease recognizing its contract with the Petitioner and further orders the American Broach and Machine Company to post certain notices.

On November 27, 1942 the N.L.R.B. filed its petition for en-

forcement of its order in the United States Circuit Court of Appeals, 6th Circuit. The case was argued and submitted December 13, 1943. On December 17, 1943 a judgment was entered by the United States Circuit Court of Appeals, 6th Circuit, granting the petition of the N.L.R.B. for enforcement of its order. January 15, 1942 a petition for rehearing was filed by the Petitioner which petition was denied on February 11, 1944.

JURISDICTION

Final judgment was entered in this case by the United States Circuit Court of Appeals, Sixth Circuit, on December 17, 1943. Petition for rehearing was denied February 11, 1944.

The Circuit Court of Appeals has in this case decided an important question of federal law which has not been, but should be, settled by this Court. [Supreme Court Rule 38 (5) (b)].

This Court has never decided that the refusal of a Trial Examiner to permit witnesses in the Court Room to enable their Counsel to cross-examine Board's witnesses is such unfair conduct by the Trial Examiner as to amount to denial of due process of law.

THE QUESTION PRESENTED

The question presented in this case is whether due process of law was denied to the Petitioner by reason of the refusal of the Trial Examiner to permit Petitioner's Counsel opportunity to have witnesses present in the Hearing Room at the time the Board's witnesses were testifying against them to assist Petitioner"s Counsel in the cross-examination of the Board's witnesses.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

A substantial federal question presents itself with respect to the scope and power of the Trial Examiner in a hearing before the National Labor Relations Board to deny to Counsel the right to have his clients present at the hearing to hear the charges and statements made against them by the Board's witnesses. (R270-271-273-274-277-279-280).

So far as Petitioner is informed this case presents, for the

first time, the question as to whether the conduct of a Trial Examiner in refusing Counsel opportunity to have his clients present to enable him to cross-examine the Board's witnesses constitutes denial of due process of law as guaranteed by the Constitution of the United States, and which is recognized as standard practice in all State and Federal Courts.

The Circuit Court of Appeals in granting the petition of the National Labor Relations Board for enforcement of its Order has sanctioned the conduct of the Trial Examiner in denying the Petitioner due process of law.

By reason of the Trial Examiner's denial to Petitioner's Counsel of the opportunity to have his clients present in the Hearing Room when testimony was being given by Board's witnesses against such parties, Petitioner was unable to refute or cross-examine the Board's witnesses. If this Court permits the final judgment of the Circuit Court of Appeals to stand in the present case, it will mean that no longer will the accused have the right to be present to hear testimony presented against them and all further hearings of the National Labor Relations Board may be conducted exparte. An analysis of the record in this case clearly shows such material restriction upon the just rights of the Petitioner to be heard and be present to hear the witnesses against them as to amount to a clear denial of due process.

Your Petitioner presents to this Court a file herewith as an exhibit hereto, a duly certified transcript of the entire record in the case, as the same appears in the United States Circuit Court of Appeals for the Sixth Circuit.

WHEREFORE, your Petitioner prays that a Writ of Certiorari issue to the Circuit Court of Appeals for the Sixth Circuit to the end that the errors aforesaid may be corrected by this Court.

JOHN B. MELLOTT

of Counsel for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES
MARCH TERM, A. D .1944
NO. 9406

American Broach Employees Protective Association, Petitioner

vs.

National Labor Relations Board, Respondent

and

American Broach & Machine Company, Respondent

Brief in Support of Petition for Writ of Certiorari

MELLOTT and KELLY
Attorneys for Petitioner
Ann Arbor, Michigan

HOWARD LICHTENSTEIN
Attorney for National Labor Relations Board

BURKE, BURKE and SMITH
Attorneys for American Broach & Machine Company

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

THE JUDGMENT BELOW

The judgment of the United States Circuit Court of Appeals for the Sixth Circuit granted the petition of the National Labor Relations Board for enforcement of its Order (R. 165) (page 2, Additional Entries).

JURISDICTION

The Circuit Court of Appeals has, in this case, decided an important question of Federal law which has not been, but should be settled by this Court (Supreme Court Rule 38) (5) (b), and judgment was entered in this case by the United States Circuit Court of Appeals on December 17, 1943. Petition for rehearing was denied February 11, 1944. (R 2-3 of Additional Entries).

STATEMENT OF THE CASE

The American Broach Employees Protective Association is an independent Union, duly certified by the National Labor Relations Board as the sole bargaining agent for employees of the American Broach and Machine Company, Respondent, in the Court below. The National Labor Relations Board filed a complaint on behalf of the UAW-CIO and a hearing on the complaint was held in the city of Ann Arbor. Motion to intervene in the case was filed by the Petitioner. The same was granted by the Trial Examiner. Hearings were commenced on Thursday, May 28, 1942, at which time the Petitioner, American Broach Employees Protective Association, was present in the Hearing Room in order to ascertain what charges the Board's witnesses were making against them and to assist their Counsel in the cross-examination of the Board's witnesses. The American Broach and Machine Company, Respondent in the court below is engaged in vital war work. The presence of the full membership of the Association resulted in practically closing the American Broach and Machine Company shop. The War Labor Board sent a telegram ordering the Petitioner to remain on the job and stay away from the Hearing Room and be present in the Hearing

Room only when giving testimony. Counsel for the Petitioner protested that such an order from the War Labor Board had resulted in his clients being absent from the Hearing Room as a result of which he was unable to cross-examine the Board's witnesses. The Trial Examiner agreed that the Petitioner had the right to be present and promised that he would give Counsel an opportunity to have any witnesses present at the Hearing whenever Counsel felt that the presence of such witnesses was necessary. Upon the first occasion when the Board's witness started making charges against one of the Petitioner's members, Counsel for Petitioner requested an opportunity to have his client present in Court to hear the charges being made against him and to aid Counsel in refutation and cross-examination of the Board's witness. In spite of the promise of the Trial Examiner to give such opportunity the Trial Examiner denied the Petitioner such opportunity and your Petitioner was consistently denied such opportunity all through the Hearing and the Petitioner directs the Court's attention to the fact that the record fails to disclose one instance where such right was given by the Trial Examiner to the Petitioner.

ERRORS RELIED UPON

The United States Circuit Court of Appeals erred in granting the petition of the National Labor Relations Board for enforcement of its Order for the reason that the granting of such petition sanctioned the denial of due process of law to the Petitioner as guaranteed by the Constitution.

ARGUMENT

Petitioner recognizes that the rules relating to evidence are relaxed in case of administrative hearings, but it is the contention of the Petitioner that the relaxation of the rules of evidence does not mean that the Board is entitled to hold its Hearings exparte and keep away from the Hearings those persons against whom the Board is making its accusations. As was said by the Court in the case of Southern Association of Bell Telephone Employees vs. National Labor Relations Board (CCA 5) 129 F (2d) 410.

"The Board in its capacity as accuser is held to the same burdens and obligations of proof as any other litigant who takes the affirmative; it may not, by accusing, put the accused upon proof, but, as accuser, it must prove its charge; in its capacity of a trier of facts it stands on the footing of a Jury and like a Jury, it must be impartial. It must not make findings without evidence to support them, and it is for the Courts to say whether there is evidence to support." It has been one of the fundamental rights of the accused to be present in the Court room when the accuser takes the stand in order that he may hear the accusations and enable his Counsel to cross-examine the accuser. Unless such right is secured to the accused, the statement of the accuser stands unchallenged and, although it may be false in its entirety, its falsity cannot be brought to light and it thus stands as evidence upon which the Court must make its finding of sufficiency.

In the present case the evidence which the Circuit Court of Appeals has passed upon as being sufficient to sustain the Board's finding is thus tainted with the denial of due process to the Petitioner and the Petitioner submits that to sanction such proceedings on the part of the Trial Examiner is to place the Courts blessing upon the worst form of "star chamber". In the present case Petitioner was anxious to co-operate in the Hearing so as to affect the work in the shop as little as possible. Although Petitioner believes it had a right to be present in body to hear the testimony against it and its members, Petitioner consented to remain at work upon the express promise of the Trial Examiner that its Counsel would have opportunity to consult with its members at any time during the Hearing that he should feel it necessary and Counsel's request at no time was for any lengthy adjournment to enable hime to have the accused present in the Hearing Room.

In fact, not more than five to ten minutes would have been sufficient to enable the accused to come from the shop to the Hearing Room, only a few blocks intervening. In spite of this the Trial Examiner arbitrarily refused such requests by the Petitioner and consistently refused them during the full course of the proceeding.

Obviously the Trial Examiner was not interested in ascertain-

ing the truth or falsity of the statements of the Board's witnesses and just as obviously, the record in this case upon which the full Board and the Circuit Court of Appeals has passed is subject to the same objection, namely, that it cannot be an impartial and unbiased report of the proceedings in this case.

JOHN B. MELLOTT

of Counsel for Petitioner

NO. [redacted] 78

CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1943

American Broach Employees Protective Association, Petitioner and Appellant

vs.

National Labor Relations Board, Respondent and Appellee

and

American Broach & Machine Company, Respondent and Appellee

Petition of American Broach Employees Protective Association, Appellant above named, for an Order Staying the Execution and Enforcement of the Final Order of the Circuit Court of Appeals for the Sixth Circuit to enable said Appellant to apply for and obtain Writ of Certiorari from the Supreme Court.

MELLOTT and KELLY
Attorneys for Petitioner and Appellant
Ann Arbor, Michigan

HOWARD LICHTENSTEIN
Attorney for National Labor Relations Board

BURKE, BURKE and SMITH
Attorneys for American Broach & Machine Company

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1943

NO. 976

American Broach Employees Protective Association, Petitioner and Appellant

vs.

National Labor Relations Board, Respondent and Appellee

and

American Broach & Machine Company, Respondent and Appellee

Petition of American Broach Employees Protective Association, Appellant above named, for an Order Staying the Execution and Enforcement of the Final Order of the Circuit Court of Appeals for the Sixth Circuit to enable said Appellant to apply for and obtain Writ of Certiorari from the Supreme Court.

TO THE HONORABLE HARLAN F. STONE, CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your Petioner, American Broach Employees Protective Association, respectfully presents this its application for an Order staying the execution and enforcement of the final order of the Circuit Court of Appeals for the Sixth Circuit rendered in the

above cause on the 17th day of December, 1943, under the provisions of Section 350 of Title 28 of the United States Code to enable said Petitioner to apply for and obtain a Writ of Certiorari from the Supreme Court of the United States.

The ground upon which said petition for certiorari has been based is as follows:

1. That your petitioner was denied due process of law by the conduct of the trial examiner for the National Labor Relations Board.

The reasons why a stay is deemed necessary are as follows:

1. That your petitioner has valuable contract rights with the Respondent, American Broach & Machine Company, which rights will be irreparably lost if the Order of the National Labor Relations Board is carried into execution.

2. That the Order of the National Labor Relations Board disestablishes the petitioner as the bargaining unit for the employees, and unless said Order is stayed, your petitioner will suffer irreparable loss and injury.

3. That your petitioner has already filed its petition with this Court for a Writ of Certiorari and has acted in good faith to protect what it believes to be its constitutional rights, but all efforts of the petitioner to protect its rights before this Honorable Court will be of no avail unless a stay of execution is granted pending the proceedings in this Honorable Court.

4. That a stay of execution will in no way jeopardize, injure or cause loss to any of the parties to this controversy, whereas the refusal of this Court to grant such a stay of execution would immediately result in the forced dissolution and disestablishment of the petitioner and loss of its contractual status with the Respondent, American Broach and Machine Company.

Dated: May 24, 1944.

JOHN B. MELLOTT
Counsel for Petitioner
Business address:
312 First National Bldg.
Ann Arbor, Michigan

(20)

Office - Supreme Court, U. S.
FILED
JUL 13 1944
CHARLES ELMORE CROPLEY
CLERK

No. 78

In the Supreme Court of the United States

OCTOBER TERM, 1944

AMERICAN BROACH EMPLOYEES PROTECTIVE ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN BROACH & MACHINE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	6
Conclusion	8
Appendix	9

CITATIONS

Cases:	
Dowdell v. *United States*, 221 U. S. 325	6
Fielden v. *Illinois*, 143 U. S. 452	6
Franklin v. *South Carolina*, 218 U. S. 161	7
Gaines v. *Washington*, 277 U. S. 81	6
Holder v. *United States*, 150 U. S. 91	7
Hopt v. *Utah*, 110 U. S. 574	6
Howard v. *Kentucky*, 200 U. S. 164	6
Johnson v. *United States*, 318 U. S. 189	6
Kelley v. *Oregon*, 273 U. S. 589	6
Lambert v. *Barrett*, 159 U. S. 660	6
National Labor Relations Board v. *Algoma Plywood & Veneer Co.*, 121 F. (2d) 602	7
National Labor Relations Board v. *Quality & Service Laundry, Inc.*, 131 F. (2d) 182	7
Oliver v. *United States*, 121 F. (2d) 245, certiorari denied 314 U. S. 666	7
Schwab v. *Berggren*, 143 U. S. 442	6
Snyder v. *Massachusetts*, 291 U. S. 97	6
Statute:	
National Labor Relations Act, Act of July 5, 1935, c. 372, 49 Stat. 449 (29 U. S. C., Secs. 151 *et seq.*):	
Sec. 6 (a)	9
Sec. 10 (b)	9
Miscellaneous:	
National Labor Relations Board Rules and Regulations, Series 2:	
Art. II, Sec. 25	9
Sec. 30	9

598459—44

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 78

AMERICAN BROACH EMPLOYEES PROTECTIVE ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND AMERICAN BROACH & MACHINE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The Circuit Court of Appeals did not deliver an opinion. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 110–167) are reported in 45 N. L. R. B. 241.

JURISDICTION

The decree of the court below was entered on December 17, 1943 (R. 1117). A petition for rehearing filed by petitioner was denied on February

11, 1944 (R. 1120). The petition for a writ of certiorari was filed on May 9, 1944. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether petitioner, an incorporated labor union, was denied due process of law by reason of the refusal of the Board's Trial Examiner to adjourn the hearing in order that members of petitioner might be summoned to hear testimony concerning them.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151 *et seq.*) are set forth in the Appendix, *infra,* p. 9.

STATEMENT

Upon the usual proceedings the Board, on October 31, 1942, issued its findings of fact, conclusions of law, and order (R. 110–167). The Board found, *inter alia,* that American Broach & Machine Company (hereinafter referred to as the Company) had dominated and interfered with the administration of petitioner, the American Broach Employees Protective Association, and contributed support to it in violation of the Na-

tional Labor Relations Act. Accordingly, the Board entered its usual remedial order requiring the Company to disestablish petitioner. On November 27, 1942, the Board filed a petition to enforce its order in the Circuit Court of Appeals for the Sixth Circuit (R. 1–5). On December 17, 1943, the court below entered a decree, unaccompanied by an opinion, enforcing the Board's order in full (R. 1117).

Petitioner challenges the decision and order of the Board and the decree of the court below on the ground that petitioner was denied a fair hearing before the Board. This contention arises from the following circumstances:

At the hearing held before a Trial Examiner of the Board on the complaint issued against the Company, petitioner was granted leave to intervene (R. 171). At the commencement of the hearing a substantial number of the Company's employees, including members of petitioner, absented themselves from their work in order to attend the hearing. Their absence threatened seriously to impair the production of various machines and tools which the Company was then manufacturing for use by numerous ordnance and other plants making military equipment. Indeed, as petitioner states, "the presence of the full membership of the Association [at the hearing] resulted in practically closing the American Broach and Machine Company shop" (Pet. 6, R.

680–681). To avoid any disruption in the flow of its products, for which there was urgent demand, the Company at the request of the National War Labor Board posted a notice at its plant that all of the men would be expected to stay on their jobs unless they attended the hearing as witnesses (R. 273–274, 681, Int. Exh. 6). Following the posting of this notice petitioner moved to adjourn the hearing indefinitely "or until such time as the War Department will permit witnesses" and "all persons interested" to attend the hearing (R. 270, 271). The Trial Examiner denied the motion, but assured petitioner's counsel that "if you feel at any time that on any particular matter you need an opportunity to confer with somebody, either here or overnight, or noon, you present that to me, and I will do everything possible to see that you are given the rights that you are entitled to" (R. 271–274).[1]

Thereafter, petitioner on various occasions during the course of the hearing moved to adjourn the proceedings in order that particular members of the Association to whom reference was being made by the witness then testifying might be

[1] The Trial Examiner, explaining his ruling, said, "* * * nobody connected with this case has indicated that parties have no right to be here, that the public is being excluded. Now, as to whether or not men ought to be at work on war industry is something that I am not passing on. I don't see the necessity of having everybody interested present at this hearing when they have representatives. It is on that basis that I am now * * * denying the motion" (R. 273).

summoned from their place of work to the hearing room and be present while such testimony was being given (R. 277, 279–280, 328–330). The Trial Examiner denied these motions (R. 277, 279–280, 329–330). On the third day of the hearing the Trial Examiner, acting upon instructions from the Board, given at the request of the National War Labor Board and the War Department, and because of the continued presence at the hearing of a large number of employees as spectators, posted a notice in the hearing room requesting "in the interest of uninterrupted war production, that no employees of the * * * Company attend these hearings as spectators during their working hours" (R. 281, 383). Petitioner thereupon renewed its motion for a "discontinuance" of the hearing, and the Trial Examiner denied the motion (R. 384–387).

Throughout the hearing, petitioner, a corporation, was represented by counsel, who examined and cross-examined witnesses, had reasonable opportunity to consult its members and representatives, some of whom remained at the hearing,[2] and to produce whatever witnesses it desired (R. 960–961, 936–939, 280–281, 291, 312, 313, 317, 352, 363, 369, 389, 391–392, 413, 449, 456, 473, 518, 571, 604, 616 625, 637, 644, 673, 764, 836, 908, 940, 964

[2] Petitioner went so far as to obtain an order from a court of the State of Michigan restraining the Company from taking any disciplinary action against any employee who attended the hearing (R. 384–386, Int. Exh. 7).

972, 980, 989, 995, 1015, 1020, 1024, 1029, 1057, 1070, 1085).

The Board and the court below reviewed the rulings of the Trial Examiner set forth above, found that no prejudicial error had been committed, and affirmed them (R. 112, 1117).

ARGUMENT

Petitioner contends that the Trial Examiner's refusal to adjourn the hearing in order that particular members of petitioner might be summoned to hear the testimony of the Board's witnesses concerning them constituted a denial of due process to petitioner (Pet. 3). We submit that this contention is without merit.

Petitioner's argument is drawn from the constitutional privilege of a defendant in a criminal case to confront his accusers and cross-examine them face to face. *Gaines* v. *Washington,* 277 U. S. 81, 85; *Hopt* v. *Utah,* 110 U. S. 574. But even in a criminal prosecution, "the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only." *Snyder* v. *Massachusetts,* 291 U. S. 97, 107–108; cf. *Howard* v. *Kentucky,* 200 U. S. 164; *Schwab* v. *Berggren,* 143 U. S. 442; *Fielden* v. *Illinois,* 143 U. S. 452; *Lambert* v. *Barrett,* 159 U. S. 660; *Dowdell* v. *United States,* 221 U. S. 325; *Kelley* v. *Oregon,* 273 U. S. 589; *Johnson* v. *United*

States, 318 U. S. 189, 201–202. Here petitioner, a corporation, was represented at all times throughout the hearing by counsel, who, as has already been noted (*supra,* p. 5), had reasonable opportunity to consult its members and representatives, some of whom remained at the hearing. Due process of law obviously does not require the presence of all members of an incorporated association at a proceeding to which it is a party.

The question whether the hearing should have been adjourned in order to enable petitioner's counsel to summon particular members whenever reference was made to them in the testimony plainly rested within the sound discretion of the Trial Examiner. *National Labor Relations Board* v. *Algoma Plywood & Veneer Co.,* 121 F. (2d) 602, 604–605 (C. C. A. 7); cf. *Holder* v. *United States,* 150 U. S. 91, 92; *Franklin* v. *South Carolina,* 218 U. S. 161, 168; *National Labor Relations Board* v. *Quality & Service Laundry, Inc.,* 131 F. (2d) 182, 183 (C. C. A. 4); *Oliver* v. *United States,* 121 F. (2d) 245, 250 (C. C. A. 10), certiorari denied, 314 U. S. 666. The Trial Examiner's rulings were wholly reasonable in view of all the circumstances. In effect, attendance of witnesses was limited to those who were to testify in any single day. No showing is made that any relevant evidence was not adduced; or that any witnesses were not given an opportunity to be heard; or that petitioner was denied the right of cross-examination. The

record thus affords no basis for the conclusion that petitioner was denied due process of law, or that the Trial Examiner's rulings constituted an abuse of discretion.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should therefore be denied.

CHARLES FAHY,
Solicitor General.

ALVIN J. ROCKWELL,
General Counsel,
RUTH WEYAND,
DOMINICK L. MANOLI,
Attorneys,
National Labor Relations Board.

JULY 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

> SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.
>
> SEC. 10. (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * * In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. * * *

The pertinent provisions of the Rules and Regulations, Series 2, of the National Labor Relations Board are as follows:

> ART. II.
>
> SEC. 25. Any party shall have the right to appear at such hearing in person, by

counsel, or otherwise, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence.

* * * * *

SEC. 30. In the discretion of the Trial Examiner, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the Trial Examiner, or by other appropriate notice. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1944